IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6525 OF 2005

Madhya Pradesh Industrial Development Corporation Limited : Petitioner

V/s.

The Mumbai District Central Co-operative Bank Limited : Respondent

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Mr.Ravi Kadam, Advocate General with Mr.S.K.Jain for the petitioner.

Mr.V.A.Thorat, Senior Advocate, i/b. Mahimtura & Co., for the respondent.

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CORAM : S.A. BOBDE, J.

October 5, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Thorat, the learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioner, Madhya Pradesh Industrial Development Corporation Limited, has challenged the interlocutory order passed by the Maharashtra State Co-operative

Appellate Court, Mumbai, dated 15.9.2005. The order is passed in an appeal and grants stay to the order in appeal, subject to the petitioner depositing half of the amount awarded to the respondent, The Mumbai District Central Co-operative Bank Ltd., for recovery of a sum of Rs.113 crores with interest before the Co-operative Court under rule 77F of the Maharashtra Co-operative Societies Rules, 1961. This rule provides for summary procedure for recovery akin to Order XXXVII of the C.P.C. In those proceedings, the petitioner sought leave to defend which was rejected. This was challenged before this Court. Eventually, a Division Bench of this Court by its judgement and order dated 28.3.2005 in Letters Patent Appeal nos.36 of 2005 and 35 of 2005 upheld the refusal of the unconditional leave to defend the dispute and the order of the learned single Judge which had modified the order of the trial Court. Against the judgment of the Division Bench of this Court the petitioner preferred a Special Leave Petition before the Supreme Court in which leave was granted and the appeal was decided on 29.7.2005. Their Lordships took note of the fact that the petitioner’s appeal is pending before the Appellate Court and with a view to enable the petitioner to argue the entire matter, observed that the petitioner may take up all contentions, including the contention that leave to defend should have been granted. Their Lordships further

observed that orders passed by the appellate Court, single Judge and the Division Bench will not operate as res judicata against the petitioner. With the aforesaid observations, Their Lordships disposed of the appeal.

3. Thereafter, the petitioner wrote a letter to the respondent dated 4.8.2005 which has admittedly been produced by the respondent before the appellate Court. In that letter, they have clearly stated that they owed a sum of Rs.90 crores to the respondent towards the principal and a sum of Rs.56.72 crores towards interest as on 31.3.2005 and offered an amicable solution for liquidating the above dues by a negotiated settlement.

4. After having written the above letter, the petitioner preferred an application for stay of the award before the appellate Court which has been decided on 15.9.2005 by the impugned order. The appellate Court has granted stay to the petitioner, subject to the petitioner depositing half of the amount of the award by the impugned order.

5. Mr.Kadam, the learned Advocate General, who appeared on behalf of the petitioner, submitted that the order granting a conditional stay is vitiated on the ground that it is contrary to the order of the Supreme Court in that Their Lordships have allowed the petitioner to raise the

contention that they are entitled to leave to defend. In other words, the contention is that the appellate Court could not have granted stay on condition that the petitioner deposits half the amount because the Supreme Court has allowed the petitioner to urge in appeal that leave to defend should have been granted.

6. Having perused the order of the Supreme Court, it is not possible to accept the contention on behalf of the petitioner. The Supreme Court has left all contentions of the petitioner open before the appellate Court, inclining the contention that they ought to have been granted leave to defend. Their Lordships have not imposed any fetters on the discretion of the appellate Court on the question of interim relief in the appeal.

7. Indeed, the appellate Court has exercised the discretion on the background that the petitioner is seeking a stay of the award for money or a money decree and has passed an order that is usually passed, viz., that of directing the appellant to deposit either the whole or part of the amount as a condition for grant of stay. I see no infirmity in this.

8. It was next urged on behalf of the petitioner that as a result of the impugned order granted by the appellate

Court, it has foreclosed or has rendered infructuous, the petitioner's contention that they ought to have been granted leave to defend before the trial Court. There is no merit in this contention either. The petitioner's right to raise the contention regarding the propriety of the trial Court refusing them leave to defend can still be adjudicated in the appeal. It is not, in any way, affected by the impugned order.

9. In this view of the matter, there is no reason to interfere with the impugned order which is interlocutory in nature and has been passed by the appellate Court only on the question of interim relief, particularly after having taken into account the petitioner's letter dated 4.8.2005 referred to above admitting the liability of Rs.146.72 crores approx.

10. In the circumstances, the rule is discharged. There shall be no order as to costs.

11. At this stage, Mr.Jain, the learned counsel for the petitioner, seeks extension of time to deposit the amount, as ordered by the appellate Court. This request is strongly opposed on behalf of the respondent on the ground that such requests are being made in this matter from the year 2003. In the circumstances of the case, time to

deposit is extended for a period of four weeks from today.

S.A. BOBDE, J.